IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 8824 of 2006

Date of Decision: 29.8.2006

M/s Amba Plastic Industries, Vill. Asthal Bohar, Distt. Rohtak ...Petitioner

Versus

State of Haryana and Others ... Respondents

Coram: Hon'ble Mr. Justice Adarsh Kumar Goel
Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. B.L.Gulati, Advocate,
for the petitioner.

Ms. Ritu Bahri, DAG Haryana.

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Rajesh Bindal, J.

The petitioner has approached this Court by filing the present petition praying for quashing of order dated 28.2.2002 (Annexurte P-4) passed by Lower Level Screening Committee and order dated 16.2.2006 (Annexure P-7) passed by the Higher Level Screening Committee in an appeal against the order passed by the Lower Level Screening Committee.

Briefly, the facts, as pleaded in the petition, are that the petitioner was a registered dealer under the Haryana General Sales Tax Act, 1973 (for short 'the State Act') and the Central Sales Tax Act, 1956 (for short 'the Central Act'). The petitioner set up a unit for manufacturing of polythene bags. In terms of provisions of Rule 28A of the Haryana General Sales Tax Rules, 1975 (for short 'the Rules') the petitioner was granted eligibility certificate for availing benefit of exemption from payment of sales/purchase tax for manufacturing of polythene bags. The quantum of benefit was determined at Rs. 3.55 lacs and the eligibility certificate so granted to the petitioner was valid for a period of seven years from April 19, 1994 to April 18, 2001. It is, further, submitted that on 15.6.1999, the State of Haryana issued a notification imposing complete ban on use of all

kinds of Plastic Handbags by businessmen, wholesalers and retailers throughout the State. As a result of the ban imposed, the petitioner had no market to sell its products accordingly, it had no option but to close down the unit and surrender its Sales Tax Registration Certificate.

The petitioner was served with notice dated September 18, 2001 under Sub Rule 8 (a) (ii) of Rule 28-A of the Rules, to show cause as to why the eligibility certificate granted to the petitioner be not withdrawn on the ground that the unit of the petitioner remained closed for more than six months during the exemption period.

In the meeting of the Lower Level Screening committee, held on January 4, 2002 and February 28, 2002, it was decided to withdraw the eligibility certificate for violation of the provisions of Sub Rule 8 (a) (ii) of Rule 28-A of the Rules. Aggrieved against the order of Lower Level Screening Committee, the petitioner filed an appeal before the Higher Level Screening Committee, raising the plea that the reason for closure of the unit was beyond his control as the unit had to be closed down because of ban imposed by the State itself on use of polythene bags. However, the Higher Level Screening Committee did not find any merit in the plea raised by the petitioner and rejected the same. This is how the petitioner is before this Court.

Assailing the orders passed by the authorities, the contention of learned counsel for the petitioner is that in terms of Rule 28-A (8) of the Rules, the eligibility certificate can be withdrawn only during its currency which expired on April 18, 2001 and not thereafter. Further, it has been argued that in the case in hand, the closure of the unit of the petitioner was for the reason of imposition of ban for use of plastic bags by the State Government itself, which was something beyond the control of the petitioner, for which the petitioner cannot be penalized.

On the other hand, learned counsel for the State submitted that the action for withdrawal of eligibility certificate had been initiated by the department well during the currency of the eligibility certificate, when the Deputy Excise & Taxation Commissioner issued a notice to the petitioner apprising him of the violation of the conditions and accordingly, the eligibility certificate could be withdrawn even after the validity thereof has already expired. It has further been argued that the case of the petitioner does not fall in the exceptions carved out in Sub Rule 8 (a)(ii) of Rule 28-A of the Rules and that the validity thereof has been upheld by this Court in Haryana Vanaspati and General Mills versus State of Haryana reported as (1994) 4 PHT 720.

The relevant provisions of Rule 28-A (8) & (11)are extracted below:-

> "(8)(a)The eligibility certificate granted to an industrial unit shall be liable to be withdrawn at any time during its currency by the appropriate Screening Committee, in the following circumstances:-
>
> (i) if it is discovered that it has been obtained by fraud, deceit, misrepresentation, mis-statement or concealment of material facts;
>
> (ii) discontinuance of its business by the unit or closing down of its business for a continuous period exceeding six months except in case of (fire, flood and other natural calamities, riots), strike or lock-out which in the opinion of the Committee concerned is beyond the control of the unit;
>
> (iii) disposal or transfer by the unit of any of its fixed assets adversely affecting its manufacturing or production capacity:
>
> Provided that no order of withdrawal of the eligibility certificate shall be made without affording a reasonable opportunity of being heard to the affected unit.
>
> (b) When the eligibility certificate is withdrawn, the

exemption/entitlement certificate shall be deemed to have been withdrawn from the 1st day of its validity and the unit shall be liable to payment of tax, interest or penalty under the Act as if no entitlement certificate had ever been granted to it.

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(11) (a) The benefit of tax-exemption/deferment under this rule shall be subject to the condition that the beneficiary/industrial unit after having availed of the benefit:-

(i) shall continue its production at least for the next five years not below the level of average production for the preceding five year; and

(ii) shall not make sales outside the State for next five years by way of transfer or consignment of goods manufactured by it.

(b) In case the unit violates any of the conditions laid down in clause (a), it shall be liable to make, in addition to the full amount of tax-benefit availed of by it during the period of exemption/deferment, payment of interest chargeable under the Act as if no tax exemption/deferment was ever available to it;

Provided that the provisions of this clause shall not come into play if the loss in production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to the reasons beyond the control of the unit;

Provided further that a unit shall not be called upon to pay any sum under this clause without having been given reasonable opportunity of being heard."

From a bare perusal of the Sub-Rule 8 of the Rule 28A of the Rules, under which the action has been taken against the petitioner for withdrawal of eligibility certificate, it is evident that the eligibility certificate can be withdrawn by the appropriate Screening Committee at any time only

during its currency.

From the undisputed facts in the present case, it is evident that the eligibility certificate issued to the petitioner was valid from April 19, 1994 to April 18, 2001 and the show cause notice for withdrawal of eligibility certificate was issued by the appropriate Screening Committee to the petitioner for the first time on September 18, 2001 which was clearly beyond the currency of the eligibility certificate.

In our view, the contention of the petitioner that the action under Rule 8 (a)(ii) of Rule 28-A of the Rules is not competent after the currency of the eligibility certificate had already expired is meritorious and deserve acceptance.

Accordingly, we quash orders Annexure P-4 dated February 28, 2002 and Annexure P-7 dated February 16, 2006.

Learned counsel for the State submitted that the unit having been closed after the benefit of tax exemption having been availed of by it, the same is liable to be withdrawn for violation of Sub Rule 11 of Rule 28-A of the Rules as the unit of the petitioner did not remain in production for the next five years after availing the benefit. If there is any such violation, we leave it open to the respondents to take action under any other provision of the Rules, in case the same is competent.

The writ petition is disposed of in the manner indicated above.

(Adarsh Kumar Goel)
Judge

(Rajesh Bindal)
Judge

August 29, 2006.
pj/mk